IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20032 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KUNAL JAYESHKUMAR GAJJAR & 1 - Petitioner(s)

Versus

STATE OF GUAJRAT THR'SPL.SECRETARY(APPEALS) & 6 - Respondent(s)

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Appearance :
MR DILIP B RANA for Petitioner(s) : 1 - 2.
MR DIPEN DESAI, AGP for Respondent(s) : 1,
None for Respondent(s) : 2 - 7.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/10/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Addl. Secretary, (Appeals), Revenue

Department, State of Gujarat dated 17-7-2004 passed in Revision Application No.27 of 1999 in dismissing the said revision application and confirming the order passed by the Collector, Valsad dated 30-8-1999 passed in CH/CTS/Revision/Case No.6 of 1998 in confirming the order passed by the Deputy Collector, Valsad dated 14-9-1998 passed in Case No. CTS Appeal No. 2 of 1998 with respect to the property bearing survey no.3040/B.

2. The property bearing survey no.3040/B situated at Valsad was in the name of one Damjibhai Hirjibhai Gajjar, who expired on 3-10-1996. The heirs of Damjibhai Hirjibhai submitted an application on 7-11-1996 to enter their names in the City Survey Record by succession and their names were mutated in the City Survey Record as heirs of deceased Damjibhai Hirjibhai being entry No.133. The said entry came to be objected by the guardian of the petitioner Jayeshkumar Damjibhai Gajjar and they have submitted that the deceased had executed one will in favour of the petitioners and that he has not signed in the application for mutation on the basis of the succession. The City Survey Superintendent, Valsad by its order dated 1-10-1997 set aside the entry No.133 and directed to remove the names of the respondents and to enter the names of the

petitioners through their guardian Jayeshkumar Gajjar in the City Survey Record. Being aggrieved by and dissatisfied with the order passed by the City Survey Superintendent, Valsad dated 1-10-1997 passed in Disputed Case No. 1 of 1997, the respondent no.3 preferred CTS Appeal No.2 of 1998 before the Deputy Collector, Valsad and the Deputy Collector, Valsad vide its order dated 14-9-1998, partly allowed the said appeal setting aside the order passed by the City Survey Superintendent, Valsad dated 1-10-1997 and remanded the matter to the City Survey Superintendent, Valsad to make an additional entry and also observed that in view of the pendency of the suit between the parties, necessary entry can be mutated on the basis of the judgment and decree that may be passed by the Competent Civil Court. Being aggrieved by and dissatisfied with the order passed by the Deputy Collector, Valsad, the petitioners preferred Revision Application before the Collector, Valsad being Revision Application No.6 of 1998 and the Collector, Valsad by its order dated 30th August, 1999 dismissed the said Revision Application against which the petitioners preferred Revision Application before the Addl. Secretary (Appeals), Revenue Department, State of

Gujarat being Revision Application No.27/99 and the Addl. Secretary (Appeals) by its judgment and order dated 17-7-2004 dismissed the said Revision Application confirming the order passed by the Deputy Collector as well as the Collector, Valsad. Being aggrieved by and dissatisfied with the aforesaid three orders, the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri Dilip B Rana, learned advocate appearing on behalf of the petitioners has vehemently submitted that the property in question is transferred in favour of the petitioners pursuant to the Will executed by the deceased and the authorities could not have ignored the same and the petitioners have got the right, title and interest in the property in question pursuant to the Will executed by the deceased Damjibhai Gajjar and therefore, it is requested to allow the present Special Civil Application.

4. It is required to be noted that the dispute is with regard to the entry in the Revenue Record / City Survey Record. Admittedly the respondent no.3 is in possession of the property in question and as held by the Hon'ble Supreme Court in the case of Durga Das v Collector and

Others reported in 1996(5) SCC page 618, in the case of Sankalchan Jaychandbhai Patel and Others v Vithalbhai Jaychandbhai Patel and Others reported in 1996(6) SCC page 433 and the judgment of this court in the case of Ratilal Chunilal Solanki and Others V Shantilal Chunilal Solanki and Others reported in 1996(1) GLH page 816 as well as in the case of LR.s of Popat Khima Ramani and Ors v Collector, Rajkot and Others reported in 2003(1) GLH page 30 and other judgments, the entry in the Revenue Record or mutation entry does not confer any right, title or interest over the property and that it is only an entry for the purpose of collection of land revenue from the person in possession and that the Revenue Authority has no jurisdiction to decide the dispute of title while dealing with and considering RTS proceedings. It is also further held that if, there is a dispute with regard to the title, the parties are to be relegated to approach the Civil Court for establishing their rights and the necessary entry can be made on the basis of the judgment and decree that may be passed by the Competent Civil Court.

5. As stated above, the Civil Suit is already pending between the parties and the petitioners have already filed a suit for establishing their rights on the basis

of the alleged Will executed by the deceased Damjibhai Gajjar and in fact, the respondent no.2 is found to be in possession of the property in question. However, he is restrained from transferring the property in question.

6. Under the circumstances, since civil suit is pending between the parties, the Collector, Valsad has passed an order to make an additional entry and has observed that the judgment and decree that may be passed by the Competent Civil Court, will be binding to the parties, it cannot be said that all the three authorities below have committed any illegality. On the contrary, they are justified in passing the said orders and the said orders are in consonance with settled law laid down by the Hon'ble Supreme Court as well as this court in the decisions referred to above.

7. Under the circumstances, no interference is required at the hands of this court by exercising powers under Articles 226 and 227 of the Constitution of India. Hence, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed.

(M.R.SHAH,J)

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